



NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

[NRC-2020-0065]

Transfer of Very Low-Level Waste to Exempt Persons for Disposal

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed interpretive rule; withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing a proposed interpretation of its low-level radioactive waste disposal regulations that would permit licensees to dispose of waste by transfer to persons who hold specific exemptions for the purpose of disposal by burial. The proposal is being withdrawn based on the NRC staff's assessment that the proposed changes may not benefit the regulatory framework for the disposal of low-level radioactive waste.

DATES: The proposed interpretive rule is withdrawn as of **[INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Please refer to Docket ID **NRC-2020-0065** when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- **Federal Rulemaking Web site:** Go to <https://www.regulations.gov> and search for Docket ID **NRC-2020-0065**. Address questions about Docket IDs in Regulations.gov to Jennifer Borges; telephone: 301-287-9127; e-mail: Jennifer.Borges@nrc.gov. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please

contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- **Attention:** The PDR, where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via e-mail at PDR.Resource@nrc.gov or call 1-800-397-4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Maurice Heath, telephone: 301-415-3137, e-mail: Maurice.Heath@nrc.gov and Stephen Dembek, telephone: 301-415-2343, e-mail: Stephen.Dembek@nrc.gov. Both are staff of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

On March 6, 2020, the NRC issued a proposed interpretation of paragraph 20.2001(a)(1) of title 10 of the *Code of Federal Regulations* in the *Federal Register* (85 FR 13076). The proposed interpretation would have expanded, in guidance, the meaning of "authorized recipient" in § 20.2001, allowing for the disposal of very low-level radioactive waste (VLLW) at approved non-licensed disposal sites in accordance with technical and regulatory requirements established by the NRC or Agreement States for granting such an exemption.

This change would have had the effect of providing a regulatory approach that, in addition to that specified by § 20.2002, allowed the transfer and disposal of certain VLLW in hazardous and solid waste disposal facilities having explicit approval to dispose of VLLW. In cases where the waste disposal site had an approval (exemption) for disposing of VLLW, the use of § 20.2001 by the licensee would not have required additional, specific approval to transfer VLLW to that disposal site under certain circumstances.

The NRC sought comments on the proposed interpretive rule in order to engage stakeholders on the merits of the idea and collect feedback prior to making a decision on whether or not to move forward with the proposed interpretation. The comment period was extended in response to requests related to the COVID-19 Public Health Emergency and closed on October 21, 2020 (85 FR 45809).

The NRC received approximately 200 individual comment submissions and approximately 15,000 form letter submissions. The vast majority of these comments opposed the proposed interpretive rule. The major comment themes included:

The NRC should complete the 2018 VLLW Scoping Study, address the comments already submitted, and publicize the results instead of pursuing the proposed interpretive rule.

The current regulations for the disposal of VLLW are sufficient and already allow for an alternate method of disposal on a case-by-case basis under the provisions of § 20.2002.

The NRC should pursue rulemaking to provide a definition of VLLW that can be used across the industry if a regulatory change is pursued. Changes to LLW regulations, including the definitions of authorized recipient and VLLW, should be pursued via the formal rulemaking process and not as an interpretation to an existing regulation. This approach would be more in keeping with the provisions of the Administrative Procedures Act.

The NRC and/or Agreement State should provide opportunities for public involvement during the exemption review process that evaluates a disposal facility request to become an authorized recipient for the disposal of VLLW.

The approval process should consider the need for an NRC or Agreement State environmental review related to the proposed VLLW disposal sites.

The NRC should provide an explanation of the implementation of the proposed interpretation. Specific comments questioned how implementation would be managed across various Agreement State programs, the methods for verifying that VLLW

disposals were conducted as intended, and requested clarification of oversight responsibilities in the event that provisions of an exemption for disposal were challenged or found not to have been met.

Implementation of the proposed interpretive rule should consider potential impacts on existing state and LLW compact requirements, including additional burdens on state agencies that would be the primary regulatory body involved in the review, approval, and oversight of disposal sites wishing to obtain an exemption for VLLW disposal. Specific comments questioned how the proposed change could affect the LLW disposal agreements already in place amongst various states involved in the LLW compact system.

In addition, the Organization of Agreement States Board and 10 individual Agreement States provided comments that did not support the NRC's expanded definition of "authorized recipient." Most Agreement State comments also cited the restrictions in individual states that would prevent them from implementing the expanded definition.

The NRC staff assesses that the potential main benefit of the proposed interpretive rule—the potential for fewer regulatory approvals related to disposal at an authorized disposal site—would not outweigh the costs of implementing the proposed interpretive rule, especially given the lack of Agreement State support and a limited number of potential users. Therefore, the NRC has decided to withdraw its proposed interpretation of "authorized recipient" related to the requirements in § 20.2001 based on the conclusion that the proposed changes would not benefit the current regulatory framework for the disposal of VLLW.

The information obtained through the public comments on this effort will be considered in other ongoing low-level waste program initiatives, including the staff's Very Low-Level Waste Scoping Study. The scoping study is an ongoing action from SECY-16-0118, "Programmatic Assessment of Low-Level Radioactive Waste Regulatory Program" (ADAMS Package Accession No. ML15208A305). The staff will continue to

monitor the external environment and seek innovations in the low-level waste regulatory program.

Dated: December 10, 2020.

For the Nuclear Regulatory Commission.

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Recovery, and Waste Programs,
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Safeguards.

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